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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 497

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND LOCAL UNION 549, *Appellants,*

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellees,*

OVERNITE TRANSPORTATION COMPANY AND RUTHERFORD FREIGHT LINES, INC., *Intervening Appellees.*

On Appeal From a Decision of a Three-Judge United States District Court for the District of Columbia

MOTION TO AFFIRM

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MOTION TO AFFIRM

Come now Overnite Transportation Company and Rutherford Freight Lines, Inc., intervening appellees and, pursuant to Rule 16, Paragraph 1(c) of the Revised Rules of this Court, move that the judgment of the District Court be affirmed.

STATEMENT OF CASE

This is a direct appeal from a final judgment of a three-judge District Court convened pursuant to 28 U.S.C. §§ 2284 and 2325. The District Court dismissed appellants' action to set aside an order of the Interstate Commerce Commission entered in No. MC-FC-8393, *Overnite Transportation Co. — Purchase — Rutherford Freight Lines,* 97 M.C.C. 568, whereby the Commission authorized the purchase by Overnite Transportation Company of all the interstate operating authority and physical properties of Rutherford Freight Lines subject to the condition that any employee of either carrier separated from his employment as a result of consummation of the approved transaction should receive, for not more than three months, severance pay at the rate of his average monthly pay for the twelve months immediately preceding the month in which he was discharged.

STATUTES INVOLVED

The statute involved is Section 5 of the Interstate Commerce Act, 49 U.S.C. § 5 particularly Paragraph (2) and subparagraphs (c) and (f) thereof.

Paragraph 5(2)(c) requires the Commission in passing on any proposed transaction to give weight to various considerations including ". . . (4) the interest of the carrier employees affected".

Paragraph 5(2)(f) further declares that in approving "any transaction involving a carrier or carriers *by railroad*" the Commission "shall require a fair and equitable arrangement to protect the interest of the *railroad* employees affected". The same subsection further provides that "In its order of approval, the

Commission shall include terms and conditions providing that during the period of four years from the effective date of such order, such transaction will not result in emplyoees of the carrier or carriers *by railroad* affected by such order being in a worse position with respect to their employment * * *" (Emphasis added).

ISSUE PRESENTED

The sole issue presented is whether the Commission in approving the acquisition by one motor carrier of another motor carrier and having due regard for "the interest of the carrier employees affected" as required by Paragraph 5(2)(c), is legally bound to impose employee-protective conditions guaranteeing to adversely affected motor carrier employees the *same* measure of protection as they would be entitled to under Paragraph 5(2)(f) if they were railroad employees. In *Amalgamated Association of Street, Electric Railway and Motor Coach Employees, et cetera,* v. *U. S.,* 221 F. Supp. 959, the same District Court from which the present appeal is taken, found that the Commission *had no such obligation* provided it gave a "reasoned explanation" of its failure to do so. In its decision approving and authorizing Overnite's acquisition of Rutherford, the Commission, being cognizant of the Court's decision in the *Amalgamated* case (which it refers to as the *American Buslines* case), very carefully supplied the "reasoned explanation" required of it, saying:

> "In the *American Buslines* case, the District Court also did not indicate that the Commission was bound to apply the mandatory provisions of section 5(2)(f) of the act to motor carrier employees, stating, in its decision, that 'We need not here attempt to delineate what measure of relief, if any,

should be provided to the employees of American Buslines, Inc.' and further 'But we think that if any particular measure of relief is one which would ordinarily be granted to railroad workers similarly situated, the Commission should not deny it to the employees of American Buslines, Inc., without a *reasoned explanation* of its denial, * * *.'

"In the first place, as previously noted, the law does not require that provisions for the protection of motor carrier employees be imposed. In addition, the skills of motor carrier employees are more adaptable than the more technical and limited skills of most railroad employees. Motor carrier maintenance employees are more readily absorbed into maintenance work in garages and similar establishments, truck drivers are employable in numerous industries in addition to motor carrier operations, and clerical workers are readily absorbed into industry. Even employees with more technical skills are more readily absorbed into the expanding trucking, bus, and public automobile businesses. The rail transportation industry, on the other hand, is unique in that it generally has a full complement of employees with very few openings for new employees. The trend toward fewer operating rail employees is one of public knowledge. Displaced rail employees, therefore, would encounter more difficulty in securing similar positions and consequently, need more protection from adverse effect than do motor carrier employees." (Emphasis added)

DISTRICT COURT'S DECISION

The District Court (which, as stated, is the same Court as laid down the "reasoned explanation" doctrine in the *Amalgamated* or *American Bus Lines* case) declared that appellants' action in bringing the *Overnite* case "is an attempt to reargue the legal issues

presented in the first appeal of the *Amalgamated* case". Adhering to its holding in the *Amalgamated* case, the District Court declared (see Jurisdictional Statement, Appendix A, pages 36 and 37):

> "Motor carrier employees *do not need very much financial protection* from the adverse effects of Section 5 transactions, for they move in an expanding industry and possess quite a degree of transferability within the industry itself. We also agree with the Commission that 'the skills of motor carrier employees are more adaptible (sic) than the more technical and limited skills of most railroad employees'. Displaced railroad employees meet with more difficulties in obtaining similar positions and, therefore, they need more protection than do motor carrier employees.

> "The standard of fair and equitable protection which the Commission must grant to motor carrier employees *will not be found in the standard established for railroad employees.* While Section 5(2)(f) of the Act requires certain minimum financial protection over a period of four years to railroad employees, no such requirement has ever been enacted by the Congress for motor carrier employees. In the railroad cases, the minimum protection is prescribed by the statute, and discretion is given only to increase such protection, *while in the motor carrier cases, no minimum is prescribed by the statute, for the statute only grants a discretion to award protection to motor carrier employees that is fair and equitable.*

> "The Commission was not required to follow the mandate of the Congress regarding the minimum protection granted railroad employees as a guide to the minimum protection for motor carrier emlpoyees. We cannot say that, under the circumstances of these cases, the motor carriers' employees involved are so similarly situated to railroad

employees as to entitle them to more protection than the Commission has awarded them.

"We hold, therefore, that the policy of the Interstate Commerce Commission to protect employees affected by financial transactions between motor carriers differently from employees where railroads are involved is supported by a rational basis and is authorized by the statute.

* * * * * * * * *

"We hold, therefore, that the protection given to motor employees of the two proceedings before the Court is fair and equitable to both the employees and the involved motor carriers." (Emphasis added)

LEGISLATIVE HISTORY

The conclusion of the District Court first in the *Amalgamated* case and later here that under §§ 5(2)(c) and (f) motor carrier employees are not as a matter of law entitled to the same protection as railroad employees is firmly supported by the legislative history of the two sections. For the convenience of the Court, that history is set forth in the Appendix hereto.

"REASONED EXPLANATION"

The District Court's further conclusion that the Commission, following its mandate in the *Amalgamated* case, had made an adequate "reasoned explanation" of its decision is patently sound. Specifically, the Commission found in effect as follows:

1. That the skills of motor carrier employees are more adaptable (more readily saleable) than the more technical and specialized skills of railroad employees.

2. That motor carrier maintenance employees are more readily (than railroad employees) absorbed

into maintenance work in garages and similar establishments.

3. That truck drivers are employable in numerous non-carrier industries.

4. That motor carrier clerical workers are readily absorbed into industry.

5. That truck, bus, and public automobile businesses are expanding and can absorb motor carrier employees more readily than railroad employees.

6. That rail transportation is unique in that it is contracting and generally has a full complement of employees.

7. That separated railroad employees would encounter more difficulty (than motor carrier employees) in securing similar new positions.

8. That separated railroad employees need more protection than do motor carrier employees.

9. That motor carriers as a rule do not have substantial resources with which to pay separated employees.

10. That motor carriers as a rule are subject to greater competition which limits their capacity to pay.

11. That motor carriers as a rule have high operating ratios.

12. That motor carriers as a rule do not have the capacity to absorb substantial or long-term compensation awards.

13. That motor carriers frequently dispose of their operating rights and properties *only* because they are financially unable to continue service to the public.

14. That imposition of employee-protection conditions in such cases would defeat or impede the

transfer with adverse effects on the service to the public,

15. That unifications defeated by onerous employee-protection conditions are likely to result in the demise of the weaker carriers with total loss of their jobs to employees.

16. That in railroad total abandonment cases (comparable to transfers of virtually bankrupt motor carriers) employee-protection conditions are not usually imposed.

17. That in view of the different language found in Section 5(2)(c) and sub-paragraph (f), Congress did not intend that motor carrier employees should receive the same protection as railroad employees.

CONCLUSION

The issue in this case is simple. Accepting the admonition in the *Amalgamated* case that it should give a "reasoned explanation" of any failure to accord motor carrier employees the same measure of protection required by the statute in the case of railroad employees, the Commission did so abundantly. No more than this is required. The terms of the statute are clear and consistent with the legislative intent. The District Court's decision is correct and no substantial question worthy of this Court's attention is presented by the

appeal. It is respectfully submitted that the judgment of the District Court should be affirmed.

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APPENDIX

Legislative History of Sections 5(2)(c) and (f)

Prior to enactment of the Motor Carrier Act, 1935 (now Part II of the Interstate Commerce Act), section 5(4) of the Interstate Commerce Act dealing with consolidations of railroads, required only that the Commission, before granting an application for approval, find that the proposed transaction would "promote the public interest." It contained no specific requirement that consideration be given to the interests of employees. Nevertheless, the Commission in *St. Paul Bridge & Terminal Ry. Co.—Control,* 199 I.C.C. 588, 595 (1934) found that the "public interest" embraces the interests of employees and that its approval of a proposed transaction could properly be coupled with reasonable requirements (conditions) imposed in the interests of employees. Following this decision, in January, 1935, former Commissioner Eastman, then Federal Coordinator of Transportation, recommended legislation providing for dismissal compensation for railroad employees displaced through coordination projects. H. D. No. 89, 74 Congress 1st session.

Thus, when the Motor Carrier Act, 1935, ultimately approved August 9, 1935, was before the Congress, that body was undoubtedly cognizant of both the *St. Paul Bridge* case and the Coordinator's recommendation respecting railroad employees. It did not, however, incorporate in the new Motor Carrier Act, as adopted, any provision whatsoever respecting employees adversely affected by motor carrier consolidations or mergers. Section 213 of that Act made purchases, consolidations and mergers of motor carriers subject to Commission approval but required only that such approval be based on a finding that a proposed transaction would be "consistent with the public interest" and made no specific mention of the interests of carrier employees. When 213 was before the House, Congressman

Sadowski, explaining what was meant by "consistent with public interest," ignored completely both the *St. Paul Bridge* case and the interest of carrier employees, indicating that the sole concern of the framers of the bill was the possibility of motor carrier control getting "into the hands of competing forms of transportation, who might use the control as a means to strangle, curtail or hinder." 79 Cong. Rec. 12206.

Several months after adoption of the Motor Carrier Act of 1935, the Commission in its 1935 annual report to the Congress recommended legislation to protect employees from undue loss as a consequence of *railroad* abandonments and acquisitions. A similar recommendation was made in its annual report for 1936. In addition, the Federal Coordinator in January 1936 and again in March 1936 also renewed his recommendation of legislation providing for dismissal compensation to protect *railroad* employees. H.D. No. 394, 74 Congress, 2d session.

Against this background of reports and recommendations designed to protect railroad employees from undue losses in connection with *railroad* consolidations, the bill, S 2009, which ultimately became the Transportation Act, 1940 (54 St. 898) came on for consideration by the Congress. As significant here, it ended with the repeal of former Section 213 and the incorporation of the substance thereof in what is now Section 5 of the Act including the adoption of subparagraphs (2)(c) and (2)(f) with their *radically different* provisions respecting the protection to be accorded carrier employees in the event of consolidations, mergers, etc.

Other than the *St. Paul Bridge* case and the various reports to Congress of the Commission and the Federal Coordinator already mentioned, the history of paragraphs (2)(c) and (2)(f) begins in September 1938 when the President appointed a special "Committee of Six" to consider transportation problems and recommend legisla-

tion.[1] This Committee, composed of three members representing railroad management and three members representing railroad labor, recommended among other things the complete revision of section 5. More specifically, it proposed a requirement that before any proposed consolidation be made effective approval be obtained from a proposed Transportation Board. Approval or disapproval by the Board of a proposed consolidation was to be based on four listed considerations, among which was the interests of the employees affected. The Committee report at page 32 provided that:

> "* * * The Board shall examine into the probable results of the proposed consolidation and require, as a prerequisite to its approval, a fair and equitable arrangement to protect the interests of the said employees."

A proposed bill prepared by the Committee of Six contained the following pertinent provisions:

> "(c) In passing upon any proposed transaction * * *, the Commission shall give weight to the following considerations, among others: * * * and (4) the interest of the carrier employees affected
>
> "(d) * * * The Commission shall require, as a prerequisite to its approval of the proposed transaction under the provisions of this section, a fair and equitable arrangement to protect the interests of the employees affected."

S. 2009 included in Section 49(3)(b)(4) the same provisions for the protection of employees as recommended by the Committee of Six.[2] As drafted, Sections 49(3)(b)(4)

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[1] Report of the Committee to the President (December 28, 1938) at p. 1, reprinted in Hearing on H.R. 2531 and 4862 before the House Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess., pp. 257-308.

[2] See S. Report No. 433, 76th Congress, 1st Session.

and 49(3)(c) applied to employees of *all* carriers under the Act. In the Senate hearings on the bill, Commissioner Eastman testified:[3]

> "Concerning unification of carriers: Section 49 of S. 2009 contains provisions applicable to unifications of all types of carriers. Paragraph (c) provides, among other things, that the Commission 'shall require, as a prerequisite to its approval of any proposed transaction under the provisions of this section, a fair and equitable arrangement to protect the interests of the employees affected.' This was taken from the recommendations of the Committee of Six with reference to railroad unifications, but as included in Section 49 it relates to unification of motor or water carriers as well.
>
> "Purchases or other unifications of motor-carrier properties occur very frequently, and the Commission authorizes many such transactions every month. Many of them are very small affairs and often they involve only a purchase of operating rights. It is important that they be handled rapidly for the vendor often sells because he is no longer able financially to continue operation. We have had no demands for protection, of employees in connection with such transactions, nor any evidence that protection is needed, and it is probable that in many instances it would be difficult to formulate any feasible plan of protection. The principle of protection I believe to be sound, and we should have authority to require it where a reasonable need therefor is shown. However, I do not believe that a plan for such protection should rigidly be made a 'prerequisite' to our approval of any proposed transaction, reguardless of the circumstances and the evidence."

In reporting the bill with certain amendments, the Senate Committee, nevertheless, included the original language requiring, as a prerequisite to approval of any proposed

---

[3] Hearings on S. 1310 before the Senate Committee on Interstate Commerce, 76th Cong., 1st Sess., at 793 (1939).

acquisition or consolidation, a fair and equitable arrangement to protect the interest of the employees affected, and in this form the bill passed the Senate.

Insofar as employee protection is concerned, S. 2009 came before the House of Representatives in the form passed by the Senate, and as here pertinent provided: (see 84 Cong. Record 9881)

> "Sec. 5(2)(c). In passing on any proposed transaction under the provisions of this section, the Commission shall give weight to the following considerations, among others: . . . (4) where appropriate, the interest of the carrier employees affected.
>
> • • • • • • • • • •
>
> (e) . . . the Commission shall require, as a prerequisite to its approval of any proposed transaction, a fair and equitable arrangement to protect the interests of the employees affected."

Representative Harrington offered the following amendment to Section 5(2)(3) (84 Cong. Record 9882):

> ". . . after the word 'affected', substitute a comma for the period and add the following 'Provided, however, That no such transaction shall be approved by the Commission if such transaction will result in unemployment or displacement of employees of the carrier or carriers, or in the impairment of existing employment rights of said employees.'"

The purpose of this amendment was to safeguard *railroad* labor. (84 Cong. Record 9882). The House debates unanimously favored the amendment to help *railroad* labor (See id. at 9882-9887) and the Harrington amendment was agreed to.

Thereafter, in a letter to both House and Senate Committees on Interstate Commerce concerning the Omnibus Transportation Legislation, S. 2009, as passed by both Houses of Congress, former Commissioner Eastman, as

Chairman of the Legislative Committee of the Interstate Commerce Commission, again renewed the Commission's *objection* to the mandatory requirements of the bill particularly *as applied to employees of motor carriers* and recommended the following amendment to the employee protective provisions of the proposed Section 5(2)(e) which included as a proviso, the Harrington amendment:[4]

> "In line 2, page 211 [of the July 26, 1939 bill], insert after 'shall' the words 'have authority to', and in lines 5-10 strike out the proviso. A large portion of motor carrier unifications involve the absorption of *failing lines.* Often the acquiring carrier is seeking only to obtain operating rights and is not interested in the operations of the other carrier as a going concern. The requirement that we impose a condition for the protection of employees, to say nothing of the proviso in lines 5-10 [the Harrington Amendment], would therefore *have the effect of prohibiting many such transactions. Very often this would not benefit the employees, for unless acquired by some other carrier, the line for which they are working will die.* It would, however, penalize the owners of the operating rights. We think it wiser to make the authority discretionary rather than mandatory.
>
> "As for the proviso, the object of unifications is to save expense, usually by the saving of labor. Employees who may be displaced should, in the case of railroad unifications, be protected by some such plan as is embodied in the so-called 'Washington Agreement' of 1936 between the railroad managements and labor organizations. The proviso, by prohibiting any displacement of employees, goes much too far, and in the long run will do more harm than good to the employees. In these days of intense competition from other forms of transportation, the railroads must, if they are to thrive and grow, conduct their operations with the utmost possible economy and efficiency. If they are

[4] Letter of January 29, 1940, page 67 (Committee Print of the House Committee on Interstate and Foreign Commerce, 76th Cong., 3d Session).

prevented from doing this, further shrinkage of operations and continuing loss of employment are inevitable."

The Conference Committee in apparent deference to the Commission's view struck from the bill all references to Section 5, including the new labor provisions (see House Rep. 2016, 76th Cong., 3d Sess.) but the House refused to accept S. 2009 as so reported. With respect to the Harrington amendment, the debates in the House clearly indicate that the concern was for the protection of *railroad* employees. (86 Cong. Record 1260-1264, 2236-2238, 5869-5871, 5878-5882). The bill was recommitted to the Conference Committee with instructions that the managers on the part of the House insist on the inclusion of the consolidation provisions but modified to limit the Harrington amendment to employees of railroads.[5] (86 Cong. Record 5886). The House instructions and the revision obviously were intended to reflect the intent of Representative Harrington and those supporting his proposal. As seen there were ample grounds which had been stressed by the Commission, for distinguishing between the measure of protection to be afforded railroad and motor carrier employees.

After the bill was recommitted to the Conference Committee, the differences between the House and the Senate were resolved and S. 2009 was amended and enacted into

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[5] The revision reads as follows: "As a prerequisite to its approval of any consolidation * * * ", in respect to carriers by railroad subject to the provisions of Part I, and as a prerequisite to its approval of the substitution and use of another means of transportation for rail transportation proposed to be abandoned, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order, * * *, granting approval * * *, the Commission shall include terms and conditions providing that such transaction will not result in employees of said carrier or carriers being in a worse position with respect to their employment. * * * '

law as the Transportation Act of 1940, including the present language of Section 5(2)(c) and (f).

The intention of Congress with respect to the Harrington Amendment is summed up in the debates on the second conference report. Representative Halleck stated: (86 Cong. Rec. 10187)

> "As to the Harrington amendment, I do not know what the author of that amendment is going to do about this bill, but I do know and understand that the people whose cause he so valiantly championed are not objecting to this provision as it is now written. It follows the principle of the so-called Washington agreement that was a contract entered into by the carriers with their employees to fix the rights of employees whose employment terminated upon consolidation. This language gives to the employees greater protection and more far-reaching protection and recognizes the principle to which we all subscribe, that rights of employees should be protected, and beyond that, writes it into law."

Representative Wolverton spoke even more strongly: (86 Cong. Record 10189)

> "* * * Nor should anyone overlook the fact that the adoption of this amendment is agreed to by the conferees gives *railroad* workers protection against sudden dismissal and financial assistance *that is not enjoyed by workers in any other industry.* And, this is true without any exception of qualification whatsoever." (Emphasis added)

From its inception, the Harrington amendment was designed *solely for the protection of railroad employees.* The testimony in support of the employee protective provisions is exclusively limited to protection for railroad workers and *nowhere in the Congressional reports or debates on the bill can there be found one single reference to the need for protection of motor carrier employees.* To the contrary, in the two instances in which motor carrier employees were

mentioned *it was pointed out that such provisions should be made discretionary,* rather than mandatory. Congress was aware that the amendment as agreed to by the conferees granted to *railroad* workers only, a degree of protection against sudden dismissal "that is not enjoyed by workers in any other industry." Both their legislative history as set forth above and the very fact that two radically differing subparagraphs were both made a part of Section 5(2) make it clear beyond any doubt that Congress intended to grant a mandatory employment protection exclusively to rail workers while providing only that the interests of motor carrier employees should be considered and given weight.[6] Clearly, there is no merit whatever to the argument that employees of motor carriers are entitled as a matter of law to the same measure of protection as railroad employees.

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[6] It may be observed, parenthetically, that this unequal treatment, the granting to railroad employees of a gratuity not granted to motor carrier employees, in no way affected the validity of the legislation. *Detroit Bank* v. *U. S.*, 317 U.S. 329, 337; *Currin* v. *Wallace,* 306 U.S. 1, 13-14; *U. S.* v. *Petrillo,* 332 U.S. 1, 8-9.